



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

In: KSC-BC-2020-06
Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi

Before: Trial Panel II
Judge Charles L. Smith, III, Presiding Judge
Judge Christoph Barthe
Judge Guénaél Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

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Public Redacted Version of 'Prosecution motion for admission of evidence of W01129 pursuant to Rule 154 and request for video-conference testimony with confidential Annexes 1-2'

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I. INTRODUCTION

1. The SPO has identified W01129 as a suitable reserve witness for upcoming evidentiary blocks should the need arise.¹ Accordingly, pursuant to Articles 37 and 40 of the Law,² and Rules 137-138 and 154 of the Rules,³ the Specialist Prosecutor's Office ('SPO') hereby: (i) submits the information required by paragraphs 73-74 of the Conduct of Proceedings Order;⁴ and (ii) requests the admission of the statements (collectively, 'Rule 154 Statement'), together with the associated exhibit, of W01129 ('Witness').⁵ Further, pursuant to Articles 23(1) and 40(2), and Rules 141(1) and 144,⁶ and considering W01129's personal circumstances and reserve witness status, which require a degree of flexibility, the SPO requests the Trial Panel to authorise W01129's testimony via video-conference from an appropriate location in [REDACTED].⁷

II. SUBMISSIONS

A. ADMISSION OF THE PROPOSED EVIDENCE PURSUANT TO RULE 154

2. Consistent with Rule 154, the Witness is anticipated to: (i) be present in court, (ii) be available for cross-examination and any questioning by the Panel, and (iii) attest that his Rule 154 Statement accurately reflects his declaration and what he would say if examined. As detailed below and in the accompanying annex for the Witness, the Proposed Evidence meets the requirements of the Rules, is relevant, authentic, and

¹ Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023 ('Conduct of Proceedings Order'), para.81.

² Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). All references to 'Article' or 'Articles' are to Law, unless otherwise specified.

³ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

⁴ See Annex 2.

⁵ The Rule 154 Statement and associated exhibit are referred to herein as the 'Proposed Evidence'. Annex 1 attached to this filing contains a table identifying the Proposed Evidence for W01129.

⁶ See also Registry Practice Direction on Video Links, KSC-BD-23/COR, 17 July 2020 as corrected on 5 August 2020 ('Practice Direction').

⁷ [REDACTED].

reliable, and has probative value, which – considering, in particular, that the Witness will be available for cross-examination – is not outweighed by any prejudice. Admission is therefore in the interests of justice.⁸

3. *Relevance.* W01129, [REDACTED], was a [REDACTED], living in [REDACTED] in [REDACTED]. On [REDACTED], W01129 was abducted near the [REDACTED] by a group of armed KLA members, some in camouflage uniforms with KLA emblems. The commander of the area, [REDACTED], was present. W01129 was tied, beaten, and mistreated. [REDACTED]. He was first taken to a location in [REDACTED] for further beating and mistreatment, then to an unfinished house in [REDACTED]. In [REDACTED], W01129 was severely beaten by commanders [REDACTED], and others.

4. The night of [REDACTED], W01129 was transferred to a house in [REDACTED]. He was questioned by KLA commander [REDACTED], who, *inter alia*, threatened execution. Next, at KLA headquarters in [REDACTED], W01129 was also questioned and beaten. On [REDACTED], W01129 was transferred to the village of [REDACTED], and held in the detention facility of a local KLA site for [REDACTED]. He was beaten daily. W01129 was released on [REDACTED]. On [REDACTED].

5. W01129's evidence is thus relevant to charged crimes in the Indictment.⁹

6. *Authenticity and Reliability.* W01129's Proposed Evidence is *prima facie* authentic and reliable. The Rule 154 Statement comprises transcripts of his SITF interview,¹⁰ and

⁸ The applicable law has been set out in previous submissions and decisions in this case. *See e.g.* Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154, KSC-BC-2020-06/F01380, 16 March 2023, Confidential, paras 26-35.

⁹ *See, inter alia*, Amended Indictment, KSC-BC-2020-06/F00999/A01, 30 September 2022, Confidential ('Indictment'), paras.[REDACTED]; Lesser Redacted Version of 'Confidential Redacted Version of Corrected Version of Prosecution Pre-Trial Brief', KSC-BC-2020-06/F01594/A03, 9 June 2023 ('Pre-Trial Brief'), paras [REDACTED].

¹⁰ 003298-TR-ET Part 1 RED; 003298-TR-ET Parts 2-4.

his statements before [REDACTED],¹¹ and [REDACTED].¹² These statements bear sufficient indicia of reliability.¹³ W01129's SITF interview is recorded in verbatim transcripts. W01129 was duly advised of his rights as a witness.¹⁴ The witness's [REDACTED] statements also provide indication of date, place and case number, as well as details of all participants in the session, including their signatures,¹⁵ and warnings of the witness's rights and obligations.¹⁶

7. *The associated exhibit is admissible.* The associated exhibit forming part of the Proposed Evidence in Annex 1 – maps marked by the witness – should be admitted as an inseparable and indispensable part of the Rule 154 Statement. The Rule 154 Statement would be less comprehensible or have lesser probative value without the associated exhibit.

8. *Suitable for Rule 154 Admission.* W01129's Proposed Evidence satisfies the requirements and serves the purposes of Rule 154. Rule 154 admission for W01129's Proposed Evidence will significantly reduce the number of hours required for direct examination. While W01129's multiple statements overlap, altogether they are moderate in length,¹⁷ and should all be admitted and considered as they include complementary detail and reflect the consistency of the witness's evidence to different authorities over more than ten years. If this request is granted, the SPO intends to elicit brief oral testimony from W01129 for approximately 1.5 hours on essential matters that clarify or explain certain aspects of his evidence.

¹¹ [REDACTED].

¹² 041987-041994-ET RED2; 003282-003297-ET Revised RED, pp.003282-003295.

¹³ For an individualised assessment of reliability, *see* Annex 1.

¹⁴ 003298-TR-ET Part 1 RED, pp.1-4.

¹⁵ [REDACTED]; 041987-041994 RED; 003282-003297 RED.

¹⁶ [REDACTED].

¹⁷ Altogether, the English versions of his statements are 161 pages, including cover and interpreter/witness certification pages.

B. VIDEO-CONFERENCE REQUEST

9. Rules 141(1) and 144 expressly permit the testimony of witnesses to be given by means of video-conference, establishing three conditions that must be satisfied in such cases: (i) the technology must permit the witness to be properly examined by the Parties and the Panel, at the time they are testifying; (ii) the venue chosen must be conducive to the giving of truthful and open testimony and to the safety, physical and psychological well-being, dignity and privacy of the witnesses; and (iii) the measure must not be prejudicial to or inconsistent with the rights of the accused. No additional criteria are warranted.¹⁸

10. The Trial Panel has held that video-conference testimony should not be considered only on an exceptional basis, while acknowledging that in court presence remains the preferred option.¹⁹ The Trial Panel has also found that when considering video-link testimony, it may assess factors such as the 'location, personal health situation, availability and security of the witness, as well as the complexity and duration of any logistical travel and other arrangements to be made.'²⁰ Procedural considerations, including the efficient conduct of the proceedings,²¹ are also relevant.

¹⁸ Public Redacted Version of Decision on URGENT Prosecution Motion for Admission of Evidence of W02486 Pursuant to Rule 154 and Request for Video-Conference Testimony (F02270), KSC-BC-2020-06/F02281/RED, 3 May 2024 ('Decision F02281'), para.10. *See also Specialist Prosecutor v. Shala*, Public Redacted Version of Decision on Specialist Prosecutor's request for video-conference testimony for TW4-04, TW4-10 and TW4-11, KSC-BC-2020-04/F00482/RED, 13 April 2023 ('*Shala* Decision'), para.13.

¹⁹ Decision F02281, KSC-BC-2020-06/F02281/RED, para.21. *See also* Decision on Prosecution Request for Video-Conference Testimony and Special Measure for W04337, KSC-BC-2020-06/F01558, 26 May 2023, Strictly Confidential and *Ex Parte* ('Decision F01558'), para.16; Decision on Prosecution Request for Video-Conference Testimony for W03827, KSC-BC-2020-06/F01776, 8 September 2023, Confidential ('Decision F01776'), para.12.

²⁰ Decision F02281, KSC-BC-2020-06/F02281/RED, para.21. *See also* Decision F01776, KSC-BC-2020-06/F01776, para.12; Decision F01558, KSC-BC-2020-06/F01558, para.16; Decision on Prosecution Request for Video-Conference Testimony for W04571, KSC-BC-2020-06/F02181, 15 March 2024 ('Decision F02181'), para.7.

²¹ *Shala* Decision, KSC-BC-2020-04/F00482/RED, para.14.

In particular, the nature of reserve witnesses warrants a degree of flexibility in scheduling, which video-link may facilitate.²²

11. There are several reasons why it is preferable for W01129 to testify via video-link. W01129's [REDACTED] render an extended absence for in person testimony both impractical and potentially detrimental to his livelihood. [REDACTED], and testifying via video-link would facilitate W01129's complete testimony while simultaneously minimising a risk for psychological distress. In turn, the use of video-link technology in this case would ensure the Trial Panel has access to W01129's testimony while respecting his commitments and well-being.²³

12. W01129's status as a reserve witness further justifies the use of video-link testimony. The flexible nature of video-link arrangements aligns with the potential need for reserve witness testimony, allowing for more efficient scheduling and minimising disruption to both the proceedings and the witness's circumstances.

13. Granting the request would not prejudice or be inconsistent with the rights of the Accused.²⁴ The available technology allows for W01129 to be examined under conditions equivalent to those in the courtroom. W01129 would testify before the Trial Panel after taking the solemn declaration, in real-time, in the presence of the Parties and Victims' Counsel, who will be able to question W01129 as if the witness were physically present. Moreover, the protective measures granted to W01129²⁵ can be effectively implemented through secure video-conference facilities. Technology

²² Oral Order authorizing Witness W04586's testimony to take place via video-conference, 14 July 2023, Transcript, pp.5802-5803.

²³ Decision F02281, KSC-BC-2020-06/F02281/RED, para.23. *See also Shala* Decision, KSC-BC-2020-04/F00482/RED, para.18; Decision F01776, KSC-BC-2020-06/F01776, para.14; Oral Order authorizing Witness W03878's testimony to take place via video-conference, 28 February 2024, Transcript, p.13064, lines 2-5.

²⁴ *See* Decision F01776, KSC-BC-2020-06/F01776, para.15.

²⁵ [REDACTED].

allows for the application of such measures during video-link testimony, safeguarding both W01129's safety and the integrity of the proceedings.²⁶

14. Pursuant to Article 3 of the Practice Direction, the SPO provides the following information: (i) W01129 is a reserve witness for upcoming evidentiary blocks should the need arise; (ii) the expected duration of direct examination is 1.5 hours;²⁷ (iii) the SPO requests W01129 to appear via video-link from an appropriate location in [REDACTED]; (iv) W01129 has in-court protective measures, including a pseudonym and face-voice distortion;²⁸ and (v) W01129 will testify in [REDACTED]. The SPO remains available should the Registry require any further information.

III. CLASSIFICATION

15. This filing and its Annexes are confidential pursuant to Rule 82(4) and to give effect to existing protective measures. In the public redacted version of this filing, specific ERNs have been redacted for the protection of W01129. To give effect to W01129's in-court protective measures, the ERN of [REDACTED] statement must remain redacted, including after his testimony.²⁹

IV. RELIEF REQUESTED

16. For the reasons set out above, the Trial Panel should: (i) admit the Proposed Evidence, subject to fulfilment of the Rule 154 conditions by W01129 during his appearance in court; and (ii) grant the request for video-conference testimony.

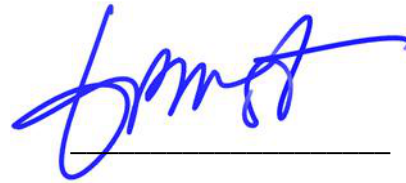
²⁶ Decision F02281, KSC-BC-2020-06/F02281/RED, para.22.

²⁷ Amended List of Witnesses, KSC-BC-2020-06/F01594/A01, 9 June 2023, p.64/567.

²⁸ [REDACTED].

²⁹ See footnotes 11, 15-16.

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Friday, 23 August 2024

At The Hague, the Netherlands.